

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SCOTT C. SMITH,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS.

Defendant.

CASE NO. C10-5228 RBL/JRC

ORDER GRANTING  
PLAINTIFF'S MOTION TO  
AMEND AND REMOVING A  
MOTION TO DISMISS FROM  
THE CALENDAR

This 42 U.S.C. §1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b) (1) (A) and (B) and Local Magistrate Judge's Rules MJR 1, MJR 3, and MJR 4.

On April 7, 2010, the only defendant at the time, the State of Washington, filed a motion to dismiss (Dkt. # 7). Plaintiff then filed a "notice of amendment to the complaint" and a proposed amended complaint (Dkt. # 14 and 16). Plaintiff no longer names the State of Washington as a defendant and now names Tracy Schneider and Brian Peterson as defendants (Dkt. # 16). Neither Schneider nor Peterson has been served.

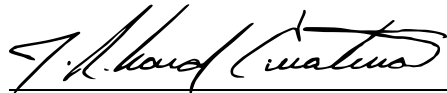
1 Fed.R.Civ. P. 15(a) allows for amendment of a complaint once as a matter of course prior  
2 to the filing of an answer or responsive pleading. A motion to dismiss is not considered a  
3 responsive pleading. Thus, the motion to amend the complaint is GRANTED.

4 The motion to dismiss was filed by a defendant who is no longer a party. Further, no  
5 named defendant has been served. The motion to dismiss, (Dkt. # 7), will not be heard and  
6 should be removed from the court calendar.  
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8 A separate order directing that the clerk's office serve the complaint will be filed.

9 The Clerk of Court is directed to send a copy of this Order to plaintiff.

10 DATED this 14<sup>th</sup> day of June, 2010.

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13 J. Richard Creatura  
14 United States Magistrate Judge  
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